

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Dale Bowyer)  
MEETING DATE: March 11, 2008

ITEM: 3

SUBJECT: **Municipal Regional Stormwater NPDES Permit – Alameda County, Contra Costa County, Santa Clara County, San Mateo County and all of the Cities and Flood Control Agencies within those Counties, Cities of Fairfield-Suisun and Vallejo** - Hearing to Receive Testimony on Tentative Order

CHRONOLOGY: March 2007 - The Board heard a status update on the development of the Municipal Regional Stormwater Permit

DISCUSSION: This is the first of two public hearings on adoption of a Municipal Regional Stormwater Permit (MRP) for 77 municipalities and local agencies in Alameda, Contra Costa, Santa Clara and San Mateo Counties, and the Cities of Fairfield, Suisun City and Vallejo. The Tentative Order and supporting Fact Sheet (Appendix A) were available for public comment from December 14 until February 29. This testimony hearing provides an opportunity for the public and all stakeholders to further communicate their interests directly to the Board and for Board members to ask questions of staff and stakeholders.

The great majority of these 77 permittees have been subject to municipal stormwater NPDES permits since the early 1990s and have strong and award-winning stormwater management programs in many respects. The Tentative Order, which would be the fourth five-year permit for some of the permittees, represents a new approach in several key ways. It is the first permit that covers all 77 permittees with the same requirements, adjusted for permittee size and type, for the same five-year term. It is the first permit that directly contains all requirements rather than referring to a separate stormwater management plan for implementation details. In addition, this Tentative Order includes an annual report form to clarify and add consistency to the once-per-year reporting requirement necessary to determine compliance.

The Tentative Order is a product of over three years of discussion and collaboration with many stakeholders, including circulation of draft performance standard tables, a working draft permit circulated in 2006 and circulation of an administrative draft in May 2007. We also convened numerous stakeholder meetings, and work groups to solicit input on and review of draft products. The primary stakeholders were the permittees, largely working through their regional body, the Bay Area Stormwater Management Agencies Association; environmental groups, including Save The Bay, San

Francisco BayKeeper, and the National Resources Defense Council; interested citizens; and industry representatives.

In its substance, the Tentative Order reflects the following priorities, most being continuation of requirements under current permits:

- **Consistent and Accountable Actions** - Specifying with accountability the current level of effort constituting “maximum extent practicable”, the federal regulatory standard, for the mandatory elements of a municipal stormwater program. These elements include: municipal maintenance activities, industrial and construction site control, illicit discharge abatement, new and redevelopment treatment measures, public outreach and participation, and control of non-stormwater runoff. In addition, the following permit elements are receiving new emphasis, or represent additional tasks:
- **Monitoring** - Bringing all of the Region’s stormwater programs into a consistent approach to monitoring to answer basic stormwater management questions such as waterbody health, presence of pollutants and toxic impacts, loads of impairing pollutants, and long term trends. This should foster regional collaboration among permittees and achieve cost-sharing.
- **Abate Trash in Waters** – Trash has been recognized as a stormwater pollutant issue in municipal maintenance activities for years. We considered listing several waterbodies as impaired by trash in 2002, when trash was placed on the pollutant “watch list” to allow time for municipalities to implement trash prevention and control measures. Outcry from the public to get the trash out of local creeks and the Bay has escalated in recent years, along with new information on the impacts of marine debris on aquatic life on a global scale. While it will not be an easy task, trash is a pollutant whose impact is obvious, and for which practical solutions exist.
- **Implement TMDLs** – The MRP will serve as the implementation vehicle for the Board-adopted mercury and PCBs TMDLs for urban runoff. A range of pilot and study actions, in addition to increased existing efforts, target these high profile pollutants.
- **Reporting for Compliance Determination** – Unlike wastewater treatment permittees, which report their compliance monthly or quarterly, stormwater permittees report only once a year. We do not propose to change that frequency in this Tentative Order, but we have developed a standardized form to streamline the reporting requirements and to facilitate future electronic submittal. Report standardization should make it easier for permittees to demonstrate program effectiveness and for Board staff and the public to determine permit compliance.

The monitoring, trash, TMDLs, and reporting elements reflect new emphasis or represent additional tasks. Any requirements that are a step-up from current implementation are phased-in to allow time both for the permittees to establish

additional capacity and resources and for staff to work with them on identifying the most efficient and effective means of implementation.

We have received numerous comment letters (Appendix B) on the Tentative Order. Many of the comments reflect support for key aspects of the MRP, including support from members of Congress and State Legislators. There are also numerous requests for minor changes and concerns that may be resolved through clarification of the intent and substance of requirements. However, a number of commenters raised substantive issues.

Major issues raised by the **permittees** include:

- **Lack of resources to achieve compliance** – With the restrictions of Proposition 218 and difficult economic times, generating additional resources for achieving the federal Clean Water Act standard of maximum extent practicable is difficult. While the costs for stormwater compliance on a per capita basis are small compared with wastewater treatment, for instance, those programs are exempted from the 2/3 vote requirement for fee increases for service.
- **Monitoring requirements are more extensive than previous efforts by the stormwater countywide programs** – There are concerns with the cost and extent of monitoring and requirements for toxicity identification to track sources.
- **Trash capture capital installations will be costly** – The requirement for initial installation of trash capture devices in storm drain systems by the fourth year of the permit is challenging.
- **Data collection and reporting is burdensome** – Permittees contend some reporting requirements can be removed while retaining accountability.
- **TMDL implementation** will be costly – the extent of requirements to implement adopted TMDLs appears too costly to permittees.

**Environmental groups** are concerned in general that the Tentative Order does not go far enough with Low Impact Development requirements for new development, with trash control implementation, and that the monitoring is not extensive enough to determine urban runoff's true impacts to waters and effectiveness of the permittees' management efforts, among other concerns.

After this testimony hearing, we will continue to review and prepare responses to written comments, and, as appropriate, prepare revisions to the Tentative Order. We will also pursue constructive dialogue with all stakeholders to resolve issues. We anticipate asking the Board to consider approving a revised tentative order this summer.

**RECOMMEN- DATION:** No action is necessary at this time.

**APPENDICES:** A. Tentative Order and Fact Sheet and Attachments  
B. Comments on the Tentative Order

# Appendix A

## Tentative Order with Fact Sheet and Attachments

# Appendix B

## Comments on the Tentative Order